No. 1157

SUPE. JR COURT OF THE DISTRICT OF C UMBIA

TAX DIVISION

DIST

RUSSELL B. STEVENSON, JR.	:	APR 10 1978
and	:	
MARGARET R. AXTELL,	:	FILED
Petitioners	:	
v.	:	Tax Division No. 2395
DISTRICT OF COLUMBIA,	:	
Respondent	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter comes before the Court on petitioners' appeal from the assessment of a deficiency by the District of Columbia in the amount of $436.06 for income taxes for the tax year 1974. The parties fully stipulated the relevant facts, and have submitted the legal issues involved for the Court's determination. The question is whether a domiciliary of the District of Columbia is entitled to a credit against his District of Columbia income tax for tax required to be paid to another jurisdiction on personal services income earned in that other jurisdiction.

Upon consideration of the briefs and oral arguments, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioners are husband and wife who were domiciliaries of the District of Columbia for the taxable year 1974.

2. As domiciliaries of the District of Columbia, they filed a joint District of Columbia tax return for the year 1974.

3. Petitioner Stevenson is now, and was during the year 1974 and at all other times relevant to this case, a member of the full-time faculty at the National Law Center of George Washington University.

4. During the spring semester of 1974, petitioner Stevenson was on leave of absence from George Washington University in order to serve as visiting Professor of Law at the Cornell Law School, Cornell University, Ithaca, New York.

5. Beginning on or about January 15, 1974, the petitioners resided in Ithaca, New York, for a period of slightly less than six months.

6. During the spring semester of 1974, a period extending from January through June of that year, petitioner Stevenson received no compensation from George Washington University. During this time he was paid a salary of $11,500.00 by Cornell University. New York State income taxes were withheld from this salary.

7. Under the New York law applicable to the taxation of the New York source income of non-residents, petitioner Stevenson was required to pay and has paid New York State income tax in the amount of $412.35 on the salary paid to him by Cornell University in the first half of 1974.

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8. Petitioner Stevenson sought to credit the New York State income tax paid by him for 1974 against the District of Columbia income tax payable for 1974. This credit was disallowed by the Department of Finance and Revenue, which assessed the deficiency now in controversy, composed of the $412.35 credit plus interest from April 15, 1975, a sum of $436.06.

CONCLUSIONS OF LAW

1. The District of Columbia imposes an income tax upon the taxable income of every individual domiciled in the District on the last day of the taxable year. D.C. Code §§47-1551c(s) and 47-1567b(a). As petitioners were admittedly domiciliaries of the District of Columbia during 1974, petitioner Stevenson's salary from Cornell was subject to taxation under District of Columbia law. See also D.C. Code §§47-1557, 47-1557a(a), and 47-1567.

The only provisions for credits against taxes which were effective in the District of Columbia in 1974 are codified at D.C. Code 1973, §§47-1567d and 47-1567e, and are inapplicable here. Section 1567d(a) of Title 47 allows a credit against District of Columbia individual income tax liability only to those District residents who are domiciled <u>elsewhere</u> and who are subject to the income tax provisions of that domicile. The District of Columbia tax law did not then and does not now permit residents who are domiciliaries of the District to take a credit against their individual income taxes for taxes paid

to another state.[1/] The assessment of a deficiency was therefore proper unless, as petitioners argue, the tax law deprived them of due process and the right to travel insofar as it resulted in Mr. Stevenson's Cornell salary being taxed twice.

3. We cannot agree that the District of Columbia Income and Franchise Tax Act of 1974 deprived petitioners of property without due process of law because it failed to allow them a credit against income taxes for income taxes paid to another state. The Supreme Court long ago upheld the power of a state to tax all of the income of its residents, including income derived from sources outside the state (New York ex rel. Cohn v. Graves, 300 U.S. 308 (1937); Lawrence v. State Tax Comm., 286 U.S. 276 (1932)), and to tax that portion of a non-resident's income earned within the state (Travis v. Yale & Towne Mfg. Co., 252 U.S. 60 (1920)).

The double taxation that could thereby result was held not to offend the Due Process Clause. Guarantee Trust Co. v. Virginia, 305 U.S. 19 (1938); Curry v. McCanless, 307 U.S. 357 (1939). The Supreme Court stated in Curry v. McCanless, supra at pp. 367-368, that:

> Whether we regard the right of a state to tax as founded on power over the object taxes, as declared by Chief Justice Marshall in McCulloch v. Maryland, * * * through dominion over tangibles or over persons

1/ We note that at one time New York's tax laws were such that double taxation would have been avoided under the circumstances of this case. For taxable years prior to January 1, 1961, a non-resident of New York was permitted a credit against New York tax for income tax paid to the non-resident taxpayer's home state, provided that the home state reciprocated. See CCH State Tax Reporter, New York, Vol. 1, ¶15-335, p. 2017. For taxable years beginning on and after January 1, 1961, such credit was repealed.

> whose relationships are the source of intangible rights; or on the benefit and protection conferred by the taxing sovereignty, or both, it is undeniable that the state of domicile is not deprived, by the taxpayer's activities elsewhere, of its constitutional jurisdiction to tax, and consequently that there are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer's intangibles.

4. Petitioners suggest that these early decisions are distinguishable because the Supreme Court found the necessary due process in the ability of taxpayers in these cases to appeal to the legislature for equitable treatment. Since Congress enacted the District of Columbia Income and Franchise Tax Act of 1947 and citizens of the District were not then (and are not now) represented in Congress, it is urged that taxpayers here lacked any adequate procedural means of obtaining tax justice.

While we sympathize with petitioners' point of view, we do not find this distinction to be constitutionally significant in light of other precedents. The constitutionality of the District of Columbia Income and Franchise Tax Act has already been upheld against the attack of "taxation without representation." See Breakefield v. District of Columbia, 143 U.S. App. D.C. 203, cert. denied, 401 U.S. 909 (1970). The Circuit Court, in holding that the Act was constitutional even though citizens of the District had no elected representatives in Congress, relied on earlier authorities for the proposition that those who choose residence in the District of Columbia have voluntarily relinquished their right to representation.

Since the power of Congress to legislate for the District is established, the same due process standards which apply to state legislation should apply in reviewing provisions of the District of Columbia Income and Franchise Tax Act.[2/]

5. A general test of whether a tax law violates the due process clause was enunciated by the Supreme Court shortly after its decisions in Curry v. McCanless and New York ex rel Cohn v. Graves, supra. That test is whether the tax "bears fiscal relation to protection, opportunities, and benefits given by the state," or in other words, "whether the state has given anything for which it can ask return." State of Wisconsin v. J.C. Penney Co., 311 U.S. 435, 444 (1940).

The facts of the instant case bring it within this rule. As domiciliaries of the District of Columbia during 1974, petitioners enjoyed the protection of its laws and the benefits of tax money spent in the District. That petitioners also sought and secured economic benefit from the State of New York during the same period does not change that fact. Under the circumstances the imposition of a non-discriminatory tax on petitioners' New York income by both jurisdictions was not so oppressive and arbitrary as to infringe constitutional limitations. See generally Lawrence v. State Tax Comm., supra, and Thompson v. City of Cincinnati, 2 Ohio St. 2d 292, 208 N.E. 2d 747 (1965).

2/ Petitioners also point out that the income being taxed here was derived from personal services rather than from a trust or estate, as was the case in the early Supreme Court precedents cited. We do not find this a significant distinction for purposes of the due process clause. See Hughes v. Wisconsin Tax Comm., 278 N.W. 403 (Wisc. 1938), in which the Supreme Court of Wisconsin held that Wisconsin, state of the taxpayer's residence, could constitutionally tax income derived from services rendered in Minnesota and subject to tax in that state.

6. Petitioners' other main contention, that the tax law violates their constitutional right to travel, must also be rejected. Although not specifically referred to in the Constitution the right to travel "uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement" has been recognized as fundamental. Shapiro v. Thompson, 394 U.S. 618, 629 (1969). As such, penalties imposed on the exercise of that right are unconstitutional unless shown to promote a compelling state interest. Shapiro v. Thompson, supra. On the basis of this doctrine the Supreme Court has in recent years struck down durational residency requirements for receipt of welfare (Shapiro v. Thompson, supra), voting privileges (Dunn v. Blumstein, 405 U.S. 330 (1972)), and non-emergency medical care (Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974)).

The facts of this case, however, do not bring it within the Shapiro penalty analysis. The District tax laws have not created a classification which discriminates against those of its domiciliaries who leave the area for part of the tax year. Although petitioners' trip would have been less "expensive" if the District of Columbia had allowed a credit against District of Columbia taxes for taxes paid elsewhere, this extra expense was not a "penalty" imposed on petitioners for exercising their right to travel. It was, instead, part of a non-discriminatory tax imposed on all persons choosing to maintain a domicile within the District for the tax year.

In summary, we find that the District of Columbia Income and Franchise Tax Act of 1974 did not deprive the petitioners of due process or the right to travel because it failed to allow them a credit against income taxes for income taxes paid to another state. We are not oblivious of the fact raised by petitioners that the great majority of states imposing a general income tax afford their domiciliaries such a tax credit. Legislation modifying the tax laws to this result may well be desirable. At issue here, however, is not the fairness but the constitutionality of the tax law as it stands.

ORDER

For the above reasons, it is accordingly this 10th day of April, 1978,

ORDERED that petitioners Russell B. Stevenson, Jr. and Margaret R. Axtell are not entitled to a refund of the taxes paid, and the petition is hereby dismissed.

Fred B. Ugast

FRED B. UGAST
Judge

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